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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MOHAMAD DAKHIL, Plaintiff and Respondent, v. WEST MONNETT, Defendant and Appellant.	B285044 (Los Angeles County Super. Ct. No. BC657231)

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed.

Morris & Stone and Aaron P. Morris for Defendant and Appellant.

SLC Law Group and Louis F. Teran for Plaintiff and Respondent.

Defendant West Monnett appeals from an order denying his special motion to strike Mohamad Dakhil's defamation cause of action under Code of Civil Procedure section 425.16. We agree with the trial court that Dakhil has established a probability of prevailing on his claim and, therefore, affirm.

FACTUAL SUMMARY

A.

In February 2016, Monnett hired Dakhil, a certified public accountant, to prepare and file his 2015 federal and state tax returns. To prepare the returns, Dakhil needed to determine the amount that Monnett could deduct for depreciation of certain residential rental property in Utah. Monnett had purchased the property in 2012, lived in the residence on that property for three years, constructed improvements and additions to the residence, and began renting the property to others in 2015.[1] The amount that Monnett could deduct from his income depended in part on the depreciation basis of the residence, as determined under federal tax law.

Dakhil understood, and Monnett does not dispute, that the depreciation basis for the residence is the lesser of (1) the fair market value of the residence on the date Monnett converted the property to rental property, or (2) the adjusted basis of the

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[1] We use the term "residence" to refer to the improvements and physical development on the property that is subject to depreciation under federal tax law. (See 26 C.F.R. § 1.167(a)-2 [depreciation allowance does not apply "to land apart from the improvements or physical development added to it"].)

residence on that date.[2] Monnett states, and Dakhil does not dispute, that the adjusted basis for the residence in 2015 was $346,831.[3]

Regarding the fair market value of the residence, Dakhil states that he had asked Monnett for evidence of the market value, but Monnett had none. Monnett, however, states that Dakhil and he never discussed the market value.

Dakhil reviewed Utah law concerning property tax assessment, which requires county tax assessors to "annually update property values of property . . . based on a systematic review of current market data" (see Utah Code Ann., § 59-2-303.1) and the Utah State Tax Commission's property valuation standards, which require that the assessed values of property be within 10% of the "market value, as indicated by sales data." Based on this and other information, Dakhil concluded that the market value data provided by the tax assessor "was the most reasonably accurate and reliable data available." According to the tax assessor for the county in which the property is located, the market value of the residence in 2015 was $202,600.

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[2] According to federal regulations, "[i]n the case of property which has not been used in the trade or business or held for the production of income and which is thereafter converted to such use, the fair market value on the date of such conversion, if less than the adjusted basis of the property at that time, is the basis for computing depreciation." (26 C.F.R. § 1.167(g)-1 (2018).)

[3] Monnett calculated the adjusted basis by adding the amount of $51,886 that he spent on improvements to the $358,745 purchase price for the property, and subtracting the assessed value of the nondepreciable land.

Because the tax assessor's valuation of $202,600 was less than the adjusted basis of the residence, Dakhil used the assessor's valuation to calculate Monnett's depreciation deduction. After Monnett reviewed and approved the tax returns,[4] Dakhil filed them. Dakhil billed Monnett $550 for his services.

B.

The following year, in February 2017, Monnett informed Dakhil that Dakhil had erred by using the tax assessor's valuation in determining the depreciation basis of the residence. According to Monnett, Dakhil should have used the adjusted basis of the residence—$346,831—to calculate the depreciation deduction.

Dakhil reviewed the file and conducted further research, then informed Monnett that he had correctly relied on the assessor's valuation, and he refused Monnett's request to file an amendment to his tax returns. He did, however, prepare amendments based on Monnett's calculations, but did not sign them as the tax preparer. Instead, Dakhil provided Monnett with the amended returns and the addresses where Monnett could send them. Dakhil billed Monnett $600 for preparing the amendments.

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[4] In his declaration in support of his anti-SLAPP motion, Monnett stated that in reviewing the tax returns, he "looked at basic income figures and the spelling of names for accuracy, but did not know tax policy in regards to figuring a basis in real property," and that he "had put [his] faith in Dakhil to perform his services."

C.

On February 21, 2017, Monnett posted the following on the "Yelp" website pertaining to Dakhil's tax preparation business: "[Dakhil] is a nice guy, but he unfortunately isn't knowledgeable enough to do what he does. One of the reasons we ended up going with him was due to his positive reviews. We went with him when we did our 2015 taxes, and it wasn't until doing our taxes this year, that we found his error. We own rental property, and simply put, he put the value of it (which determines the tax write-off) at almost half of what it was worth at the time. He based his numbers off the tax assessed value of the building, and he got those numbers from our property tax bill. In doing our taxes this year, we learned that the value is supposed to be based off either the [f]air [m]arket [v]alue (what somebody is willing to pay) or the amount of money you had put into it, and we also learned that tax assessors are rarely in line with the true market value, and that they don't even attempt to be, regardless of what state you live in. We brought this to his attention, but he insisted that the tax assessed value is the same thing as the market value. A quick ["G]oogle["] search will confirm that this is far from the truth, but he refused to accept this. We then sent him a link to the IRS's website hoping that it could clear things up, as well as links to how property is assessed, but he seemingly ignored them, and doubled down. This mistake would cost us 10's of thousands of real money over the years, as he was off by nearly . . . 150 thousand. We now have to file amendments to try and fix his mess, as he has no interest in fixing it himself. It's one thing that he didn't understand one of the basics of his job, but it's another thing to ignore the evidence once it's presented.

I would never trust him to do my taxes again, as he simply lacks the knowledge required."

Dakhil personally, and later through counsel, demanded that Monnett remove his Yelp post. Monnett did not remove the post. Instead, on March 21, 2017, he updated his Yelp post with the following.

"I don't know how trustworthy the [Y]elp rating is for [Dakhil's firm], because if other negative reviewers are like me, you get a fancy certified parcel from . . . Dakhil's lawyer, telling you to delete your negative review or they'll take you to court and make you pay for it. Luckily I'm defiant enough, and I have the proper supporting evidence to show that he did my taxes wrong, that I won't allow his strong-arm tactics to keep me from performing this public service, by warning others before dealing with this person.

"Since my experience was so poor, for time's sake, I will only mention the highlights from the rest of our dealings with him.

"After leaving my first review, pointing out that I didn't think . . . Dakhil understood how to report the value of rental property, I was lucky enough to speak with him on the phone. It was then that he finally admitted to me that he values property differently than the [Internal Revenue Service (IRS)] instructs him to[] (wait! what?!?) because he is afraid that if he did it as the guidelines say, th[e]n he would have to worry about providing evidence to support the figures, and he's afraid that clients can't do that, so he takes a 'conservative approach.' According to him, if you undervalue your rental property tax write offs, by using the tax assessed value instead of the market value, you are less likely to get audited, and he's afraid of getting audited. No joke, this is

what he said to me. If he had given me the option, and informed me that he strays a bit from IRS guidelines, before he ever did our taxes, th[e]n I wouldn't be complaining right now, but he did this without our knowledge or consent.

"Honestly, I was happy to finally get him to admit that the IRS guidelines were different than what he kept claiming, just because it was so frustrating, especially since the IRS is so clear on how to do it, and I was ready to end the relationship right then and there somewhat satisfied, but then he went ahead and said that he wanted me to feel good about having dealt with him, so he offered to fix our taxes for free. Yay! Finally! Mission accomplished, right? Well, no, he billed us for it. He sent us another certified gem in the mail that was a bill for his 'free' services—very underhanded. What's odd, is that all he had to do was change one form, and then print out the amendment forms, and he would be done. Like seriously, easy peasy, but for some reason, even though he offered to do it for 'free[,'] he felt compelled to charge us more than he had originally, when he first did our taxes, all the while making sure we were under the impression that it was 'free' and to foster goodwill. This showed an extreme amount of deceitfulness. After sending his bill, he went into hiding, and refused to answer my phone calls or emails.

"Anyway, we did end up receiving the paperwork so we could amend our initial return, but at this point we don't trust him, so there is no way we're sending our tax paperwork in, as prepared by him, especially since he conveniently left out the portion that identifies himself as the tax preparer, even though legally he's not suppose[d] to do anyone's taxes without providing that information.

"I have never in my life had a worse experience in dealing with a 'professional' regardless of their field of practice. I would avoid, avoid, avoid. Now that I updated this review, I wonder if he'll sic his lawyer on me again . . . . Oh, and I take back my initial comment about him being nice."

D.

In April 2017, Dakhil filed a complaint in the superior court against Monnett alleging a single cause of action: defamation. He set forth the text of Monnett's posts to the Yelp website and alleged that the statements "falsely accused [Dakhil] of not being knowledgeable enough, not understanding his profession, preparing [Monnett's] tax returns improperly, and being deceitful." Dakhil further alleged that Monnett made the statements with the intent to injure Dakhil "in his good name and employment," and that Dakhil suffered actual damages as a result. Lastly, Dakhil alleged that he is entitled to punitive damages because Monnett made the defamatory statements "maliciously, fraudulently, and oppressively, with the wrongful intention of injuring [Dakhil]."

In June 2017, Monnett filed a special motion to strike, or anti-SLAPP motion, pursuant to Code of Civil Procedure section 425.16.[5] He argued that his posts to the Yelp website were protected under the anti-SLAPP statute and that Dakhil could not show a probability of prevailing because Monnett's

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[5] Although a defendant may move under the anti-SLAPP statute to strike particular allegations in a complaint (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384, 393-394), Monnett did not do so. Monnett's motion is directed at the entire cause of action for defamation.

statements were true; Dakhil, he argued, "prepared [Monnett's] tax returns improperly, would not fess up to his mistake, and [Monnett] was required to amend his returns."

Monnett supported his motion with his declaration and a declaration from a certified public accountant, Patrick Ryan.[6] According to Monnett, the median home price in the area where the property is located has increased each year since 2012 and, in 2015, the median home price was $355,000. On this basis, Monnett stated that the fair market value of the subject property is $355,000.[7]

According to Ryan, "Dakhil did not use the proper basis for the rental property in question." The fair market value of the rental property, Ryan explained, "could be derived using the sales of similar properties"; and, because Dakhil relied on the assessor's valuation, he "greatly understated the basis for the property." As a result, "Dakhil did make a mistake on the tax returns that could only be corrected by way of amendments."

In opposition to the motion, Dakhil submitted his declaration in which he stated that "the accuracy and reliability of market value" provided by county assessor "vary depending on the state law and regulations under which they operate." California tax assessments, for example, "are not always accurate or reliable as a result of Proposition 13." Based upon his review of Utah law and other information, as well as Monnett's failure to

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[6] Dakhil filed written objections to Ryan's qualification as an expert, which the court overruled. Dakhil does not challenge this ruling.

[7] It appears from Monnett's declaration that the value of $355,000 he attributes to the property is the combined value of the non-depreciable land and the depreciable residence.

provide him with "documents related to the market value" of the residence, Dakhil determined that the tax assessor's valuation "was the most reasonably accurate and reliable data available." Dakhil further stated that, after their dispute arose in 2017, Monnett informed Dakhil that the "property" was worth $355,000 and referred him to a website for a real estate listing service. Monnett, however, "never provided [Dakhil] with a copy of . . . a document corroborating his alleged market value of $355,000" or any "document related to the market value."

The trial court agreed with Monnett that his posts to the Yelp website constituted protected activity under the anti-SLAPP statute, but denied the motion because Dakhil "demonstrated a probability of prevailing in his contention that [Monnett's] statements in the reviews on the Yelp website, including that [Dakhil] is not 'knowledgeable enough to do what he does' and that he calculated the value of [Monnett's] rental property incorrectly, are false and defamatory."

Monnett timely appealed.

DISCUSSION

I.

Under the anti-SLAPP statute, a defendant in a civil case may move to strike a claim that arises "from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (Code Civ. Proc., § 425.16, subd. (b)(1).) The court shall strike such a claim "unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (*Ibid.*) A "probability" in this context does not mean

more probable than not (*Healthsmart Pacific, Inc. v. Kabateck* (2016) 7 Cal.App.5th 416, 430); the plaintiff need only demonstrate that the claim "possess[es] minimal merit" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 93). The plaintiff establishes such minimal merit if the complaint is legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.)

In this case, the trial court found—and Dakhil does not dispute—that Dakhil's defamation claim arises from activity protected under the anti-SLAPP statute: Monnett's posts to the Yelp website. The issue on appeal is whether the court erred in finding that Dakhil had established the requisite probability of prevailing on his defamation claim.

We review the court's ruling de novo. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.) We consider the pleadings and the evidence submitted by the parties; we accept as true the evidence favorable to the plaintiff; and we assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law. (*Bently Reserve LP v. Papaliolios* (2013) 218 Cal.App.4th 418, 425 (*Bently*); *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700 (*Overstock.com*).)

II.

A cause of action "for defamation requires proof of a false and unprivileged publication" that exposes the plaintiff " 'to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.' " (*McGarry v. University of San Diego* (2007)

154 Cal.App.4th 97, 112, quoting Civ. Code, § 45.) Monnett does not dispute, for the purpose of his anti-SLAPP motion, that he intentionally published his statements on the Yelp website or that his statements had a natural tendency to injure Dakhil in his occupation, and he does not contend that his statements were privileged. Monnett asserts that the statements are not actionable because they are opinions or true facts.

Although statements of opinion are generally not actionable, an opinion that implies a provably false assertion of fact will support a defamation claim. (*Overstock.com*, *supra*, 151 Cal.App.4th at p. 701; *Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 696 (*Summit Bank*).) As the United States Supreme Court has explained: "If a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of facts." (*Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 18-19; see *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 346.) If, however, the speaker discloses to the reader every fact upon which the opinion is based and does not imply other facts, the opinion is actionable "only if the disclosed facts are false and defamatory." (*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 387 (*Franklin*); accord, *Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 529.)

Whether a statement declares or implies a provably false assertion of fact depends upon the totality of circumstances, including the words used and the context in which the

statements are made. (*Franklin*, *supra*, 116 Cal.App.4th at pp. 385-386; *Overstock.com, supra*, 151 Cal.App.4th at p. 701; *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 809-810.) "[P]rovably false" means "provably false in a court of law." (*Weller v. American Broadcasting Companies, Inc.* (1991) 232 Cal.App.3d 991, 1006.)

The court decides whether a challenged statement is reasonably susceptible of an interpretation that implies a provably false assertion of fact. (*Bently*, *supra*, 218 Cal.App.4th at p. 427; *Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1383.) If the statement is so susceptible, the question whether the statement actually conveyed such an assertion is ordinarily for the jury. (*Bently*, *supra*, 218 Cal.App.4th at pp. 428, 435.)

III.

In Monnett's Yelp posts, he stated that Dakhil "isn't knowledgeable enough to do what he does," that he "didn't understand one of the basics of his job," and he "lacks the knowledge required." When these general statements are read in their context and in light of all of Monnett's posts, it appears that Monnett based his assertion that Dakhil lacks the requisite knowledge to prepare tax returns upon the fact that Dakhil relied on the Utah county tax assessor's valuation of the residence rather than on another measure of value in calculating Monnett's depreciation deduction. Such reliance, Monnett concludes, was "wrong," an "error," and a "mistake" that made a "mess" of Monnett's tax return.

As we explain below, Monnett's assertions of error and mistake are reasonably susceptible of at least the following two interpretations: (1) Dakhil's reliance on the assessor's

valuation was contrary to tax law or IRS guidelines; and (2) even if permitted under tax law, Dakhil's reliance on the assessor's valuation fell below the standard of care for tax preparers.

The interpretation that Dakhil's reliance on the assessor's data was contrary to tax law or IRS guidelines is supported by Monnett's statements that "the IRS is so clear on how to [value property]," and that Dakhil "values property differently than the IRS instructs him to" and contrary to what IRS "guidelines say." The interpretation is further supported by Monnett's statement that he sent to Dakhil "a link to the IRS's website hoping that it could clear things up," suggesting that there is information on the IRS's website that proves Dakhil's error. Monnett also refers to having "the proper supporting evidence to show that [Dakhil] did [his] taxes wrong" and "ignore[d] the evidence" presented to him. The "evidence" in this context could be reasonably understood as referring to sources such as IRS instructions or guidelines. Because such sources or other "evidence" Monnett purportedly possessed will presumably reveal whether Dakhil's reliance on the tax assessor's valuation was contrary to IRS instructions or guidelines, the falsity of this interpretation is provable by examining such sources and evidence.

The second reasonably susceptible interpretation of Monnett's statements of error and mistake—that Dakhil acted below the standard of care for his profession—is suggested by Monnett's statement that Dakhil was "afraid that if he did it as the guidelines say, . . . he would have to worry about providing evidence to support the figures, and he's afraid that clients can't do that, so he takes a 'conservative approach.' According to [Dakhil], if you undervalue your rental property tax write offs,

by using the tax assessed value instead of the market value, you are less likely to get audited, and he's afraid of getting audited." This explanation, Monnett asserts on appeal, demonstrates that Dakhil's reliance on the assessor's valuation "was not the product of sound professional judgment." The "error" in this sense is that Dakhil, by being too "conservative" in relying on the assessor's valuation, acted below the applicable standard of care and was therefore "wrong." Because juries can ordinarily decide whether one has acted below an applicable standard of care (see *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, 546), the falsity of this interpretation is provable in court and therefore actionable.

Because Monnett's statements concerning Dakhil's purported mistake and error are susceptible to interpretations that are provably false, it is for a jury to determine whether Monnett actually conveyed either or both of these meanings, or some other meaning. (See *Bently*, *supra*, 218 Cal.App.4th at p. 430.)

Monnett contends that his assertions that Dakhil's reliance on the tax assessor's value was an "error" and a "mistake" were nonactionable "opinion[s] that [Dakhil] erred in judgment," and that he was "not literally accusing [Dakhil] of making a mistake." The words he used, however, viewed in their context, do not suggest that he was accusing Dakhil of merely a questionable exercise of discretion about which reasonable accountants could disagree. Monnett unequivocally asserted that Dakhil "did [Monnett's] taxes wrong," and that Dakhil's reliance on the tax assessor was a "mistake" and an "error," which resulted in a "mess" that required "fixing." Moreover, even if Monnett's interpretation of his words is plausible, the words are also

reasonably susceptible of the provably false interpretations described above. Which meaning Monnett actually conveyed to his readers is a question for a jury. (*Bently*, *supra*, 218 Cal.App.4th at p. 430.)

We also reject Monnett's argument that his statements were mere hyperbole that readers would view like a "common scolding" and as "rhetoric no reader would take literally." The style, tone, and structure of the posts do not suggest a wild Internet rant by someone crudely venting frustration, as in the authorities he cites. (See, e.g., *Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, 1176-1178 [post to Internet using "crude, satirical hyperbole" "reflecting the immaturity of the speaker" was not actionable]; *Summit Bank, supra,* 206 Cal.App.4th at pp. 699-700 [Internet "rants" consisting of "free-flowing diatribes" with "colloquial epithets" and lacking "proper spelling or grammar" were not actionable].) Monnett's posts, by contrast, appear to be thoughtfully crafted, pointed critiques by one who purports to have a superior knowledge of tax law than Dakhil, at least with respect to the disputed issue. (See *Yelp Inc. v. Superior Court* (2017) 17 Cal.App.5th 1, 18 [accountant's client's Yelp post that tax " 'return was so sloppy I had another firm redo it and my return more than doubled' " was actionable].)

Monnett also attempts to distinguish his assertions of error and mistake from a hypothetical assertion that Dakhil had erred by making a mistaken entry in the tax return, which would be actionable. We reject this distinction. The test is whether the statement declares or implies a provably false fact. (*Franklin*, *supra*, 116 Cal.App.4th at p. 385.) Although it might be *easier* to prove the falsity of a statement that a numerical entry in a tax form was a mistake than it would be to prove the falsity that

Dakhil mistakenly relied on the assessor's valuation, the latter assertion is nevertheless provable.

IV.

Monnett next contends that, even if his statements are provable assertions of fact, the factual assertions are substantially true and therefore not actionable. (See *Bently*, *supra*, 218 Cal.App.4th at pp. 433-434.) We reject these contentions.

If the fact implied in Monnett's references to "mistake" and "error" is that Dakhil acted contrary to tax law or IRS pronouncements and that fact is true, Monnett should be able to point to the applicable law or pronouncements. Indeed, the references in his March post to Dakhil's actions being contrary to "IRS guidelines" and "IRS instruct[ions]" suggest at least the existence of such guidelines and instructions, if not more authoritative sources of federal tax law. Neither his briefs on appeal nor his expert witness, however, refer us to any tax guidelines, instructions, or law that Dakhil has violated.

Ryan, in support of his opinion that "Dakhil did not use the proper basis for the rental property in question," refers to the IRS regulation 1.168(i)-4(b), which states, "The depreciable basis of the property for the year of change [to business or income-producing property] is the lesser of its fair market value or its adjusted depreciable basis . . . , at the time of the conversion to business or income-producing use." (26 C.F.R. § 1.168(i)-4(b).) This regulation merely provides that a tax preparer must determine the "fair market value" of depreciable property in order to determine the depreciable basis—a proposition that Dakhil understood; it says nothing about a

particular method for determining that value or identifying any sources of information that may or may not be used.

Ryan also relied on IRS Publication No. 527, which, for 2015 returns, provided: "When you change property you held for personal use to rental use (for example, you rent your former home), the basis for depreciation will be the lesser of fair market value or adjusted basis on the date of conversion." (U.S. Treasury, Internal Rev. Serv.: Residential Real Property (Jan. 22, 2016) Pub. No. 527, ch. 4, p. 15, col. 3.) The publication then defines fair market value as "the price at which the property would change hands between a willing buyer and a willing seller, neither having to buy or sell, and both having reasonable knowledge of all the relevant facts. Sales of similar property, on or about the same date, may be helpful in figuring the fair market value of the property." (*Id.*, at p. 16, col. 1.) Although this publication provides a definition of fair market value, it too fails to specify or require a particular method for determining that value. The sentence regarding the use of sales of similar property states only what "may be helpful," not what is required.

Although Ryan ultimately concludes that he could "find no mention of using the real estate tax assessment as the fair market value of the property," he does not refer us to any material that precludes such use. The fact that the law does not mention the use of the assessor's valuation does not necessarily mean that such use is prohibited.

Monnett quotes from the Internal Revenue Manual (IRM), which provides guidelines to Internal Revenue Service "personnel engaged in valuation practice." (Internal Revenue Service, IRM (July 1, 2006) § 4.48.6.1(1).) With respect to real property valuation, the IRM states: "The valuator should determine

which methodologies are to be utilized in developing the opinion of value of the subject property. The valuator should consider the appropriate valuation approaches, such as the market approach, the income approach and the cost approach. Professional judgment should be used to select the approach(es) ultimately used and the method(s) within such approach(es) that best indicate the value of the property." (*Id.*, at § 4.48.6.2.4(3).) This does not support Monnett's position because (1) it applies to IRS personnel, not tax preparers, (2) it says nothing about reliance upon tax assessor valuations, and (3) courts have rejected the IRM as a source of law. (See, e.g., *Marks v. C.I.R.* (D.C. Cir. 1991) 947 F.2d 983, 986, fn. 1 [the provisions of the IRM "clearly do not have the force and effect of law"]; accord, *Fargo v. C.I.R.* (9th Cir. 2006) 447 F.3d 706, 713.)

In the absence of IRS pronouncements or legal authority indicating that a tax preparer must rely on particular valuation methods or cannot rely on a tax assessor's valuation, a jury could reasonably conclude that a tax preparer may rely upon a tax assessor's valuation and, therefore, that Monnett's statements implying that Dakhil erred by doing so was false.

If jurors determined that Monnett's references to "mistake" and "error" imply that Dakhil acted below an applicable standard of care, they could reasonably conclude that that implication too was false. Dakhil owed to Monnett " 'a duty to exercise the ordinary skill and competence of members of [his] profession.' " (*Lindner v. Barlow, Davis & Wood* (1962) 210 Cal.App.2d 660, 665; see *Giacometti v. Aulla, LLC* (2010) 187 Cal.App.4th 1133, 1137 [accountant has a duty to use "such skill, prudence and diligence as other members of the profession commonly possess and exercise"].) According to Dakhil, in light of Monnett's failure

to provide him with any information on the market value of the residence, he fulfilled this duty by researching "the accuracy and reliability of the market value data from the assessor" for the county where the property is located. The assertion is supported by Dakhil's declaration.

Dakhil researched Utah statutes, which require county assessors in that state to "become fully acquainted with all property in [the assessor's] county" (Utah Code Ann., § 59-2-303), and to "annually update property values . . . based on a systematic review of current market data" (*Id.*, at § 59-2-303.1, subd. (2)(a)). In order "to enhance the county's ability to accurately appraise and assess property on an annual basis," the assessor is required to maintain and update a database of properties with "data or information on sales, studies, transfers, changes to property, or property characteristics." (*Id.*, at § 59-2-303.1, subd. (6).)

Dakhil also considered a document issued by the Utah State Tax Commission, titled "Real Property Valuation Standards of Practice." According to this document, the assessor's valuation must generally "be within 10% above or 10% below market value, as indicated by sales data." Market value is defined in substantially the same way the IRS defines fair market value: As the "most probable selling price of a property in terms of cash or comparable to cash if: (1) it were sold in a competitive and open market; (2) reasonable time were allowed for exposure in the open market; (3) both buyer and seller were well informed or reasonably knowledgeable and acting prudently and in their own best interests; and (4) both buyer and seller were typically motivated, willing, and under no undue pressure or compulsion to buy or sell."

Dakhil further reviewed the pertinent tax assessor's website. He learned that the assessor sends a letter to property owners stating that the assessor's office "revalues each parcel every year" and provides a questionnaire to aid in the effort "to generate a value that accurately reflects [the owner's] home's value." The letter also informs the owner of the owner's right to appeal a valuation the owner believes is erroneous.

Dakhil states that based on his review of Utah law and the foregoing documents and the fact that Monnett failed to provide him with the market value of the property, he "made a professional and discretionary determination that the market value data for [Monnett's] property in Utah as determined and made available by the assessor . . . was the most reasonably accurate and reliable data available." (Capitalization omitted.) He therefore used that value in preparing Monnett's tax returns.

Significantly, despite Monnett's accusation of error to Dakhil in February 2017 and his assertion that the market value of the property was $355,000, Monnett still failed to provide Dakhil with evidence of such value. His post to the Yelp website referred only to an unspecified "[G]oogle search" that would confirm Dakhil's mistake. Indeed, even Monnett's declaration in support of his anti-SLAPP motion, in which he reasserts the $355,000 fair market value, relies entirely upon the unsupported assertion that the median sale price in the county where the property is located is $355,000. Even if this assertion is evidence of the median price of property in the county, that median price is not evidence of the value of the subject property or, more importantly, of the depreciable residence. Monnett, in short, has offered no competent evidence of the fair market value of the

residence and has not, therefore, supported his assertion that Dakhil's valuation was "wrong."

It is possible that data from comparable sales would provide a valuation of the residence that is more accurate than the Utah county assessor and, arguably, that Dakhil, as a matter of professional competence, should have obtained such data. That is an argument, however, for a jury; we cannot resolve that issue at this stage of the proceeding.

Because the challenged statements are reasonably susceptible of interpretations that Monnett's statements declare or imply assertions of provably false facts, Dakhil's defamation cause of action has the minimal merit necessary to defeat Monnett's anti-SLAPP motion.[8]

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[8] Because we conclude that Dakhil's defamation cause of action survives Monnett's anti-SLAPP motion based on Monnett's statements that Dakhil had made an "error," a "mistake," and "did [Monnett's] taxes wrong," we do not reach the question whether the court's ruling could be affirmed based on Monnett's statement that Dakhil was deceitful. (See *Bently*, *supra*, 218 Cal.App.4th at p. 435, fn. 8.)

DISPOSITION

The order denying Monnett's anti-SLAPP motion is affirmed. Respondent Dakhil is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

CURREY, J.*

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* Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.